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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/228,109	01/11/1999	MARTIN BRADY	0166	7301
7590 ROGER S DYBVIG 22 GREEN STREET DAYTON, OH 45402		10/24/2007	EXAMINER PRONE, JASON D	
			ART UNIT 3724	PAPER NUMBER
			MAIL DATE 10/24/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/228,109	BRADY, MARTIN
	Examiner	Art Unit
	Jason Prone	3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 27 September 2007.
- 2a) This action is **FINAL**.                                   2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 3-5 and 7-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 4,5,8,9,14 and 15 is/are allowed.
- 6) Claim(s) 3,7 and 10-13 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 11 January 1999 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, "the housing comprising a holder and a sheath", of claims 11 and 13, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 11 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In both claims 11 and 13, the phrase "a sheath" is unclear. Independent claim 10 discloses the appliance comprises a scissors holder while claims 11 and 13 further limit claim 10 by disclosing the appliance further comprises a sheath. As written the appliance comprises an independent scissors holder on the housing and an independent sheath on the housing with no linking phrase between the sheath and the holder. It is clear from the specification and claims 3 and 5 that the sheath further includes a holder structure. Making it clear that the housing does not comprise both a separate sheath and a separate holder. It is quite clear that the housing does comprise a sheath, wherein the sheath further comprises a holder structure. Using applicant's Figure 3, the holder is made up of items 60 and 62. In order for item 60 and 62 to be considered a clamp/holder both 60 and 62 must be present. It is clear that item 62 is secured to the cover of the sheath 54. So without the cover making the sheath, the holder/clamp structure cannot be mounted on the housing. Also Figure 3 clearly shows that item 62 is secured to the sheath with item 64. Making the holder/clamp part of the sheath structure. Claims 11 and 13 need to be amended along the lines of "wherein the scissors holder is a sheath" or "wherein the scissors holder is located within a sheath". The specification and Figures clearly only provide support for a single scissors holder/sheath, which is formed by a rear wall and a cover member. As written, claims

11 and 13 can be interpreted that the can opener includes a sheath structure and an independent holder structure.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 3, 7, and 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the PRESTO CAN OPENER PLUS (previously cited and, hereafter, to be called Presto) in view of Davies (4,152,831) and Nielsen et al. (5,791,608) with evidence patents Zallo (5,4,94,176) and Newman (2,720,189). Presto teaches an electric can opener having substantially everything claimed – including a jar opener mounted on the bottom wall of the can opener. See page 8 of the instructions in Presto for the jar opener. Presto does not teach a scissors releasably retained to the can opener such as by a sheath. However, Davies teaches that a scissors-like tool, which one of ordinary skill in the art can call scissors, may be attached to any surface where it is convenient via a sheath in which the sheath allows access to the scissors. See col. 2, lines 26-30, and see col. 3, lines 30-31 in Davies. Nielsen et al. teaches that a scissors may be secured via a sheath to a home appliance such as a machine in the form of a sewing machine, a refrigerator, or a washer or a dryer. See col. 2, lines 26-34 in Nielsen et al. This provides evidence that it is old and well known for structures, that are in an area that scissors are to be used, to incorporate a scissors sheath. The

Presto can opener presents convenient surfaces such as its sides, top, and back and is clearly a home appliance that can be defined as a machine. Therefore, to provide a scissors removably retained to the can opener in Presto via a sheath is suggestive from Davies since the can opener presents available, convenient surfaces. This is further made obvious by Neilsen et al. for teaching that it would have been obvious to provide a sheathed scissors on any convenient surface where it might be desired for use and wherein that surface is a machine in the form of a home appliance. Thus, clearly, the collective teachings of Davies and Neilsen et al. teach that it would have been obvious to provide a scissors, and a sheath for the scissors, on any available surface of an appliance where such scissors and sheath might be deemed useful or is considered a desirable location for the use of the scissors and sheath. Also, dependant upon the orientation of the can opener, the "back" could be considered any of the walls. For example, if one was using the apparatus, disclosed by Presto, from the side, the left wall would be the front, the right wall would be the back, and the can opener portion would be the side. Since the Presto can opener is an appliance with available space, it would have been obvious to place a scissors and sheath on the can opener if one so desired. To place the sheath on the back of the housing of the can opener, as set forth in claims 3 and 7, would have been an obvious matter of choice of said available, convenient spaced as desired. Moreover, "back" can include several surfaces of the can opener. Further regarding claims 3 and 7, it is noted that the applied sheath of Davies includes various holders such as at 20, 21, 22, 23, or 36, or, 37, 38. Any of these holders would have been obvious in the combination to make the scissors readily

removable, but secure, in its sheath. The claim would have been obvious because a person of ordinary skill has good reason to pursue the known options within their technical grasp. If this leads to the anticipated success, it is likely the product is not of innovation but of ordinary skill and common sense.

Zallo provides evidence that it is old and well known for a blade holders/sheaths to be provided on a structure mounted underneath a cabinet structure to prevent children from obtaining sharp objects (Fig. 1).

Newman provides evidence that it is old and well known for an apparatus, not necessarily known for being associated with scissor use but located in an area where scissors are used, to incorporate a scissors holder/sheath with (Fig. 7).

6. Claims 3, 7, and 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the PRESTO CAN OPENER PLUS (previously cited and, hereafter, to be called Presto) in view of Newman (2,720,189). In regards to claims 3, 7, 10, and 12, Presto discloses an electric can opener having a housing (first page of the instructions in Presto under cabinet automatic can opener plus) and a jar opener mounted on the bottom wall of the housing (page 8 of the instructions under to open jars).

However, Presto fails to disclose, a sheath on the back of the housing for holding scissors or a holder on the housing capable of releasably retaining a scissors on the housing.

Newman teaches that it is old and well known to incorporate a sheath or a holder on the housing capable of releasably retaining a scissors on the housing (18, 49, 55).

Newman also shows that it is old and well known to incorporate a scissors holder/sheath on the back of all types of structures (Figs. 1, 5, 7, and 9) including structures not known for association with a pair of scissors (Fig. 7). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Presto's kitchen appliance with a holder/sheath, as taught by Newman, to allow for the appliance to retain a pair of scissors or a similar structure and because all claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective function and the combination would have yielded predictable results.

7. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over the PRESTO CAN OPENER PLUS (previously cited and, hereafter, to be called Presto) in view of Zelson (6,253,662). Presto discloses an electric can opener having a housing (first page of the instructions in Presto under cabinet automatic can opener plus).

However, Presto fails to disclose a holder on the housing capable of releasably retaining a scissors on the housing.

Zelson teaches that it is old and well known in the art of small appliances to incorporate a drawer/holder on a housing capable of releasably retaining a scissors (40). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Presto's kitchen appliance with a storage drawer, as taught by Zelson, to allow for the can opener appliance to releasably retain articles for storage and because all claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no

change in their respective function and the combination would have yielded predictable results.

***Allowable Subject Matter***

8. Claims 4, 5, 8, 9, 14, and 15 are allowed.

***Response to Arguments***

9. Applicant's arguments filed 12 March 2007 have been fully considered but they are not persuasive. The examiner's position with respect to all of the 103 rejections remains the same. The rejection of claims 11 and 13 under 112 second paragraph remains because the applicant's invention does not disclose the structural limitation presented by claims 11 and 13. All other independent claims disclose a connecting limitation between the holder and the sheath (i.e. a scissors holder within the sheath, claims 3, 5, 7, 9, 14, and 15).

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Zallo and Smith et al.

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

Art Unit: 3724

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Prone whose telephone number is (571) 272-4513. The examiner can normally be reached on 8:00-5:30, Mon - (every other) Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer D. Ashley can be reached on (571) 272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

October 23, 2007



Patent Examiner  
Jason Prone  
Art Unit 3724  
T.C. 3700